

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 10-257 (JNE)

United States of America,

Plaintiff,

v.

James Carl Gustafson,

Defendant.

**POSITION OF DEFENDANT
WITH RESPECT TO
SENTENCING**

INTRODUCTION

The Defendant herein, on September 27, 2010, pled guilty to Counts 1 and 2 of a two-count Information, namely, False Statement, in violation of 18 U.S.C. § 1001(a)(2), a Class D Felony, and Mail Fraud, in violation of 18 U.S.C. § 1341, a Class C Felony. Pursuant to the plea agreement, the Defendant is facing an advisory range of imprisonment of between four and ten months.

The Defendant reserved the right to make a motion for a departure from the applicable guideline. Similarly, the Government reserved the same right.

COOPERATION

Pursuant to the plea agreement, the Defendant agreed to cooperate with law enforcement authorities with respect to the multi-party Indictment. Understanding that the decision to grant or deny a motion for downward departure is solely within the Court's discretion, the Defendant nonetheless understands that the Government has exercised its absolute discretion, and will be making a motion for departure pursuant to U.S.S.G. § 5K1.1. The Defendant also believes the

conduct of the Defendant, his prior criminal history, and the extent of his cooperation justifies such a motion being granted by this Court.

REQUESTED SENTENCE

Based upon the cooperation of the Defendant, his lack of criminal history, his acceptance of responsibility, and the precarious mental health of his spouse, and further justified by the advisory nature of the Guidelines pursuant to *Booker*, and the viability of probation as a reasonable and meaningful sanction pursuant to *Gall*, the Defendant respectfully requests that this Court impose a probationary sentence upon the Defendant.

Via correspondence recently received from the Assistant United States Attorney handling this case, Nicole Engisch, the undersigned understands that the Government concurs in the Defendant's position that his cooperation has been substantial, justifying a departure beneath the advisory range of four to ten months' imprisonment.

The initial entry into this case was severely hamstrung by the existence of a joint defense agreement urged by the Defendant's former counsel, and unfortunately executed by the Defendant, binding him to the interest of co-defendant Hecker. Once the undersigned attorney was substituted for the Defendant's prior counsel, the joint defense agreement was repudiated, and the Defendant's cooperation began unfettered and forthwith. The undersigned believes that the entry of the Defendant's plea, via Information, the withdrawal of the right to file motions, and the knowledge that the Defendant was cooperating directly resulted in pleas of guilty by both co-defendants Hecker and Leach.

For the above reasons, the undersigned respectfully requests the imposition of a probationary sentence.

Dated: December 20, 2010

Respectfully submitted,

BRUNO & NELSON

/s/ Frederic Bruno

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